No. 65.

Brief of Yates for Appellant.

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Supreme Court of the United States.

OCTOBER TERM 1899.

No. 65

THE LAS ANIMAS LAND GRANT COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

APPELLANT'S BRIEF AND ARGUMENT.

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THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

APPELLANT'S BRIEF AND ARGUMENT.

STATEMENT OF CASE.

The allegations of petition filed in this case are as follows:

On the 8th day of December, 1843, Cornelio Vigil and Ceran St. Vrain, residents of the then department of New Mexico, petitioned the government of New Mexico for a grant of land, which they described by natural boundaries, but without stating the quantity of land embraced in the described tract. On the 9th day of December, 1843, the government granted to them the land described in their

petition. On the 26th day of December, 1843, Vigil and St. Vrain were put in possession in the customary manner by a Justice of the Peace, and monuments were erected to mark the limits of the tract, following the lines described in the petition.

On the 7th day of March, 1844, Vigil and St. Vrain, according to the laws and customs of the Republic of Mexico, executed a deed of donation to various parties for the said described lands, and on February 2nd, 1848, the time of the ratification of the treaty between the United States and the Mexican Republic, commonly known as the Treaty of Guadaloupe Hildago, Vigil and St. Vrain, their heirs and assigns, it is alleged were in lawful and absolute possession under the laws, usages and customs of the Republic of Mexico, and have ever since remained in such possession.

The description of said lands is fully set forth in the transcript of record in Section 5 of petition, page 3. The correct translation of the Spanish petition is set forth at page 11 of abstract of record.

Pursuant to the provisions of the Act of Congress in such case made and provided, the then owners of this grant, which is known as the Las Animas Grant, presented the same for confirmation to the Surveyor General of the Territory of New Mexico, and pursuant to the provisions of said Act, the Surveyor General took testimony as to the nature, correctness, extent and bona fides of the grant, and on Sept. 17th, 1857, rendered his decision in favor of the validity of the grant in its entirety, confirmed the same and transmitted said report and confirma-

tion to Congress for its action in the premises. Congress confirmed his report on the 21st day of June, 1860, with the provision that claim No. 17 in name of Vigil and St. Vrain should not be confirmed for more than 11 square leagues.

Petitioner's allegation is that the action of Congress was not such a final action, as contemplated by the 8th section of Act of Congress of July 22, 1854.

Congress on February 25th, 1869, passed an act providing that the lands confirmed by the Statute of June 21, 1860, should be adjusted according to the laws of the public survey as nearly as practicable, and that the claims of actual settlers upon the land holding title under Vigil and St. Vrain, who may establish their claims within a year from the passage of this act, should have their titles confirmed, and that pursuant to said act, said actual settlers and representatives proved up their claims for lands aggregating $9,714.53, equivalent to 22 square leagues, and that patents were issued to them for the same.

No application was made by Vigil and St. Vrain or their representatives to have the title to said land confirmed in them as provided by said act, and neither of them, nor their legal representatives had ever assented to the provisions of said Acts of Congress of June 21st, 1860 and February 25, 1869.

By the Act of Congress of June 21, 1860, the bona fides of the grant as an empresario grant to Vigil and St. Vrain was recognized and confirmed by the government, and the same recognized as

valid under the laws of Mexico, and the title to said lands of the Las Animas grant was in the heirs, executors and assigns of said Vigil and St. Vrain.

On the 16th of October, 1858, one Romona Armijo, sole heir of Manuel Armijo, for a valuable consideration sold one sixth of said grant to Cosandra E. Baird, and in the year 1863 the government at March term of the United States District Court of the Third Judicial District of the State of Colorado, declared forfeited to the government of the United States,the said lands and ordered the same to be sold by the proper officer of the government of the United States, and on the 14th day of September, 1863, said interest was offered for sale, pursuant to said order by the Marshal of the Territory of Colorado, and bid in by St. Vrain for $1,000, he being the highest and best bidder, and on the same date the Marshal of the Territory of Colorado executed to St. Vrain a deed for the same.

By various mense conveyances the title of said lands became vested in the appellant.

During the time St. Vrain duly was seized of said interest in said land, to-wit, on the 12th day of June, 1867, he leased to the government for a period of fifteen years at the annual rental of one dollar, a portion of said tract of land and the government erected a government post or fort on the said land designated as New Fort Lyon; that on the same date the said St. Vrain leased to the government another portion of said tract of land for a period of fifteen years at an annual rental of one dollar, and by virtue of said lease the government

entered upon and took possession of the land and erected a government post or fort on the same.

No other person or persons are in possession of said grant or tract of land or any part thereof, holding or claiming to hold adverse possession to the same. The contention of the government is that by reason of the provisions of Section 5, of an Act entitled "An Act to Confirm Certain Private Land Claims in the Territory of New Mexico" approved February 25th, 1869, said plaintiffs are prohibited from having or maintaining this suit, and that by reason of the provisions of the Act of June 21st, 1860, and the Act of February 25th, 1869, said claim is one, the right to which has hitherto been lawfully acted upon by Congress, and this Court ought not to have or maintain jurisdiction over the same and for the further reason that said claim is not one which according to the law of nations, or stipulation of a territory, nor the laws and ordinances of the Republic of Mexico, this government ought to recognize this claim.

This action was begun on the 26th day of March, 1893, and after various continuances, the Court of Private Land Claims on the 5th day of October, 1898, without notice to appellant and without hearing any testimony whatever, ordered and decreed that said cause be dismissed, from which order and decree an appeal was taken.

Since this action was commenced in the Court of Private Land Claims, The Western National Bank of Pueblo has become interested in the same by the transfer to it for a full and valuable consid-

eration, of an undivided 40,000 acres interest of A. M. Pryor, one of the grantees in the title of said grant, and it is in behalf of said grant that this brief is filed.

SPECIFICATIONS OF ERROR.

First. The Court below erred in entering a final decree in this case before hearing the cause on the petition and proofs, as required by 26 U. S. Statutes, 856, Sec. 6, cl. 3 and 857, Sec. 8, cl. 1.

Second. The Court below erred in entering a final degree in the absence of full legal proof and hearing, as required by 26 U. S. Statutes, 856, Sec. 6, cl. 3 and 857, Sec. 8, cl. 1.

Third. The Court erred in holding that the evidence before it was sufficient to authorize the granting of a decree against the appellants, or either of them.

Fourth. The Court below erred in not adjudging and decreeing that the appellants were entitled to equitable relief and rendering a decree confirming the claim of the appellants and specifying plainly the location, boundaries and area of the land claimed by appellants.

Fifth. The Court below erred in rendering judgment against the petitioners in said cause, and the appellants herein, upon the pleadings in said cause, and that said judgment is contrary to the law and the facts as stated in the pleadings in said cause.

ARGUMENT.

The appellant proposes to argue the following propositions, to-wit:

I. The Court below did not follow the procedure laid down in the Act of Congress establishing the said Court in adjudicating said case.

Note—I need not make any argument on this first proposition, but simply refer the Court to 26 U. S. Statutes, 856, Section 6, cl. 3, and 857, Section 8, cl. 1.

2. This Court may on this appeal retry this cause, as well as the issues of fact as of law, and may cause testimony to be taken in addition to that given in the Court below and may amend the record of the proceedings below as truth and justice may require, and on such retrial and hearing, every question shall be opened and the decision of this Honorable Court thereof shall be final and conclusive.

Note—I need only state this second proposition and refer this Honorable Court to 26 U. S. Statutes, 858, Sec. 9, cl.

3. That the United States is of right estopped from asserting title to said lands or any part thereof by reason of the proceedings, orders and decrees by it had and made against the undivided interest of Casandra E. Baird, one of the grantees in said title, by the sale and conveyance of said interest by the U. S. Marshal, as in said pleadings fully set forth.

4. That the United States is of right estopped from asserting title to said lands or any part thereof, by reason of its tenancy of certain parts of

said grant under and by virtue of the said leases accepted by it from the said Ceran St. Vrain, one of the grantees in the title of said grant.

5. Had the whole tract included within the described boundaries been effectually severed from the public domain of the Mexican Republic by a perfect and valid grant, according to Mexican law and custom?

6. Did the Acts of Congress of June 21, 1860, and acts supplementary thereto, divest the said rights of Vigil and St. Vrain and their grantees under the said grant?

Having already disposed of the first two propositions, we direct our attention to the remaining propositions in their order.

FIRST.

THE UNITED STATES IS AND OF RIGHT OUGHT TO BE ESTOPPED FROM ASSERTING TITLE TO SAID LANDS, OR ANY PART THEREOF, BY REASON OF THE PROCEEDINGS, ORDERS AND DECREES BY IT HAD AND MADE AGAINST THE UNDIVIDED INTEREST OF CASANDRA E. BAIRD, ONE OF THE GRANTEES IN SAID TITLE, BY THE SALE AND CONVEYANCE OF SAID INTEREST BY THE UNITED STATES MARSHAL, AS IN SAID PLEADINGS FULLY SET FORTH.

While it is true that the United States is not bound by any statute of limitations, nor barred by any laches or negligence of its officers in a suit to enforce the rights and to protect the interest vested

in it as a sovereign government, in the case of fraud or mistake, yet, where in a case like this, it has treated the lands in question as the lands of a private individual and has by regular judicial proceedings obtained a judgment against the same, and has sold the same to satisfy this judgment to another private individual for the amount of the said judgment, it has no more right to repudiate said transaction by asserting a title or interest to the said lands paramount to the title conveyed by it to a purchaser at the United States Marshal's sale, than an individual would have under like circumstances. Equity and good faith would require that the Government should have no more right to practice a fraud upon individuals than individuals would have the right to practice a fraud on each other under like circumstances.

This question arose in Commonwealth vs. Andre, 3rd. Pickering, page 224, in which case the Commonwealth for a valuable consideration granted land to an alien, and it was held upon an inquest of office that the Commonwealth was estopped to set up the alienage of the grantee or of his heirs as the ground of an escheat. The Court in this case said: "This deed must operate as a rebutter, as it would if the individual were the grantor and with more reason, because the Commonwealth is not liable to an action. The Commonwealth,, if the land were recovered, would feel itself bound to repay the consideration money with interest; this would be a claim which could not be resisted without degrading the country."

Carver vs. Jackson, 4 Peters, 1. 87.
Branson vs. Wirt, 17 Wallace, 32. 42.
St. Paul R. R. Co. vs. 1st Div. St. Paul P. R. Co. 26 Minne., 31.
R. R. Co. vs. Schurmeir, 7 Wallace, 272.
Land Co. vs. Saunders, 103 U. S. Reps., 316. Note 8 at page 340.
Henry Fink, U. S. Marshal vs. Thomas O'Neill, 106 U. S. Reps., 272-281.
Rueter vs. Law, 94 Wis., 300.
Payne Lumber Co. vs. City of Oshkosh, 89 Wis., 443.
State vs. Jones Water Power Co., 66 N. W., 513.
City of Los Angeles vs. Cohn, 101 Cala., 373.
Simplot vs. Ry. Co., 16 Fed., 360.

SECOND.

THE UNITED STATES IS OF RIGHT ESTOPPED FROM ASSERTING TITLE TO SAID LANDS, OR ANY PART THEREOF, BY REASON OF ITS TENANCY OF CERTAIN PARTS OF SAID GRANT, UNDER AND BY VIRTUE OF THE SAID LAWS ACCEPTED BY IT FROM THE SAID SERAN ST. VRAIN, ONE OF THE ~~GRANTEE~~ GRANTORS IN THE TITLE OF SAID GRANT.

It is a general and well settled rule that a tenant cannot dispute his landlord's title. The foundation of this rule lies in the fact that a tenant, by his possession, acquires an advantage which is given him by his landlord. The estoppel which prevents a tenant who has acquired possession as such from claiming title adversely to his landlord, does

not depend on the validity of his landlord's title.

Good vs. Gaines, 145 U. S. Reps., 141.

THIRD.

THE NEXT QUESTION THAT ARISES IN THIS TITLE IS WHAT WERE ITS CONDITION AND NATURE AT THE TIME OF THE TREATY? HAD THE WHOLE TRACT INCLUDED WITHIN THE DESCRIBED BOUNDARIES BEEN EFFECTUALLY SEVERED FROM THE PUBLIC DOMAIN OF THE MEXICAN REPUBLIC BY A PERFECT AND VALID GRANT, ACCORDING TO MEXICAN LAW AND CUSTOM?

By the eighth and ninth articles of the Treaty of Guadaloupe Hidalgo, it was stipulated that Mexican citizens should be allowed to retain property they possessed in the territory ceded to the United States, and should be protected in its free enjoyment. For the purpose of settling claims of Mexican citizens to lands within the ceded territory, Congress, by Act of July 22nd, 1854, referred the subject matter of such claims to the Surveyor General of the Territory of New Mexico. That officer gave the case an examination and reported to Congress, September 17th, 1857, that in his opinion the grant was good and valid, according to the laws and customs of the Republic of Mexico and the Supreme Court of the United States, as well as of the Treaty Guadaloupe Hidalgo, and he proceeded to confirm the same and transmitted the proceeding to Congress for its action.

It appears that the following substantial facts

were before the Surveyor General when his determination was made, to-wit:

On the 8th day of December, 1843, Vigil and St. Vrain petitioned Armijo, Governor of New Mexico, for a grant of land situate in the new County Taos and embraced within Huerfano, Pesepa and Cacharas Rivers to their junctions with the Arkansas and Animas Rivers.

On the 9th day of December, 1843, Manuel Armijo, Governor of New Mexico, directed the Justice of the Peace of the proper jurisdiction, to place the parties in possession of the lands asked for by the petitioners, which was accordingly done on the 2nd day of January, 1844. The papers filed in the surveyor's office are the originals, duly authenticated by witnesses

It was also proved in evidence that the land had been in occupation from the time the grant was made up to the time when the Surveyor General rendered his decision whenever the conditions of the Indians would allow it to be cultivated and settled upon. At the period when said granting was made, the Province of New Mexico had just emerged from a series of revolutions and civil commotions, which had caused the general government of the republic to confer upon the government of the province extraordinary and almost absolute power in the things relating to the domestic affairs and internal government of the province.

Under this authority and the extraordinary powers vested in him, this grant is purported to have been made, and it is to be presumed that he

acted within the scope of his authority, as it has never been contested or contradicted.

It appears to the Surveyor General that the grant of the government was by the general, natural boundaries above referred to, and not of any specific quantity, and that possession had been delivered by the public officers, and the boundaries marked by mounds, as described in his certificate; that the proceeding had been had in respect to the grant, and its possession which resulted in the restoration of possession under the grant, pursuant to this decree of the departmental assembly and of the governor, and that the parties remained in possession, occupying as colonists, and claiming the whole of the land covered by the terms of the grant.

The objection is made that the governor exceeded his powers in making the grant. That by the laws of Mexico, such grants could only be made to the extent of eleven leagues to each person, and therefore the grant in question is to be construed as limited to twenty-two leagues within the described boundaries.

The Mexican law of 1824 and the regulations touching colonization are general provisions in relation to the quantity of public lands that might be granted to one person. They are not in terms, limitations upon the power of the governors of territories in making grants.

The claim was well known to be of the whole of the lands within the boundaries, for it was shown that those lands had been marked out and delivered by the Mexican officers, and were possessed by the

claimants and those holding under them, and it distinctly appeared, both by the terms of the grant itself and by the facts disclosed by Congress that the actual quantity was unknown.

The confirmation of such a claim is ex necessitate of the whole, and the fact that it turns out to be far larger than it might have been supposed, is no ground to diminish the force of the act. It is upon this confirmation that subsequent purchasers have relied, as well as the long continued possession and enjoyment of the lands in the grantees.

I can conceive of no greater act of injustice than now to hold that the confirmation by Congress can be held to be good for an amount of land less than the actual claim, indefinite and shifting in locality, and respect to which neither of the parties have asserted any claim.

Whether the departmental assembly in giving its approval could, if it saw fit, confirm a title to more than eleven leagues, it is not necessary to determine or ascertain. It is by settled law that the Treaty imposed an obligation on the United States to confirm equitable titles, arising under the acts of the Mexican authorities, that judicial possession, held for a long time after the grant by the Mexican Governor, gave an equitable title, but such an equitable title could embrace more than eleven square leagues, because the objection that the quantity claimed is excessive, is not an answer to the obligations of the Treaty, if the equity of a claimant embraces more than eleven square leagues, and that whether an approval or confirmation by

the departmental assembly could or could not give a legal title to more than eleven square leagues. Such an approval or confirmation followed by judicial possession could give an equitable title which Congress was bound to confirm where it was bona fide.

United States vs. Sutherland, 19 Howard, 363.
United States vs. Faucett, 21 Howard, 445.
Fremont vs. United States, 17 Howard, 542.
United States vs. Pacheo, 22 Howard, 225.
United States vs. Hartnett, 22 Howard, 286.
Beard vs. Federy, 3 Wallace, 478.

The correct translation of the petition of Vigil and St. Vrain clearly indicates that the granting asked for was an empressario granting. If it had not been, there would have been little cause for the frequent use for the words "colony" and "colonization" and such expressions as "settling families in the colony," unless such was the view which the granting power took of the nature of the grant.

See Maxwell Land Grant case, 121 U. S. Reps., 363.

The petition and the Governor's order formed the contract between the government and the petitioner, and they must be construed together. What is stated in either paper as to fact and intent must be taken as true.

United States vs. Baisdore, 11 Howard, 87.
Glenn vs. United States, 16 Howard, 256.
United States vs. Fremont, 17 Howard, 517.
Yontz vs. United States, 23 Howard, 489.

This act which vested a title under the laws of Mexico, a title solemnly guaranteed by the Treaty,

cannot on surmise or strained construction of the grant papers be divested, by either the Congress or the courts of the United States.

Strothers vs. Lucas, 12 Peter, 41.
United States vs. Peralto, 19 Howard, 343.
United States vs. Cambustin, 17 Sawyer, 575.

But even if this granting had been one of twenty-two square leagues,giving the juridical possession of the entire tract of land included within the out boundaries, was not only customary, but lawful. The grant then was afloat to be in the future definitely located, and it was the duty of the government to make such location.

Fremont vs. United States, 17 Howard, 542-548.
United States vs. Armijo, 5 Wallace, 449.
United States vs. McLaughlin, 127 U. S. Reps., 428-450.

Mexican land grants were sometimes the tracts designated by well defined boundaries, sometimes of a specific quantity of land lying within exterior boundaries embracing a greater amount, and sometimes of places by names when they were well known, and thus capable of identification.

Van Reynegan vs. Boulton, 95 U. S., 35.
Higueras vs. United States, 5 Wallace, 828.
Albiso vs. United States, 8 Wallace, 329.
Hornsby vs. United States, 10 Wallace, 224.

The effect of the delivery of juridical possession was to separate the land granted from the public domain and to vest the title absolutely in the grantees against the government, and the interest thus acquired by the grantees could not be divested

under the Mexican law any more than at common law, upon mere allegations and surmises.

United States vs. Santa Fe, 165 U. S., 675.
United States vs. Sandoval, 167 U. S., 278.
Rio Arriba L. & C. Co. vs. U. S., 167 U. S., 298.
Hornsby vs. United States, 10 Wallace, 240.
United States vs. Malarin, 1 Wallace, 290.
Graham vs. United States, 4 Wallace, 260.
United States vs. Peco, 5 Wallace, 536.

Under the colonization laws and regulations of Mexico, and under the expediente of grant in this case, it seems to me that the right of property and legal ownership of the whole tract of land, of which they had been given the juridical possession by the Justice of the Peace, that such title was absolute against the Mexican Government, subject to a defeasance, which could not be enforced by the government but by its citizens, who could denounce the land and assume the obligations of the original grantees, which had been forfeited.

The article of the Treaty applying to grants of realty in general is the eighth, which provides, "Mexicans now established in territories previously belonging to Mexico and which remain for the future within the limits of the United States, as defined by the present Treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof and removing the proceeds wherever they please."

Under this treaty, the grantees of the Las Ani-

mas Grant were to retain the property which they possessed in the ceded territory. The grant had been made in December, 1843. It was an empressario grant and in January, 1844, Vigil and St. Vrain had been placed in juridical possession of the entire tract as petitiond for and as shown by the map or deseno which accompanied their petition to the Governor. This possession operated under the Mexican law as a segregation of the entire tract of land from the public domain and the possession of the grantees was absolute against the Mexican government, and could only be divested by the proper legal procedure, the denouncement which had never been had.

Graham vs. Wallace, 4 Wall, 261.
Van Reyengar vs. Boulton, 95 U. S. Reps., 35.
United States vs. Peco, 5 Wall, 359.
Hornsby vs. United States,, 10 Wall, 240.
Fremont vs. United States, 17 Howard, 561.
United States vs. Pena. No. 72, decided Dec. 18, 1899, at Oct. term, 1899.

The whole title of Vigil and St. Vrain was not a title in fee simple, yet it would ripen into such by the fulfillment by the grantees of the implied conditions subsequent of colonization and cultivation, which had already been undertaken. The fulfillment of these conditions subsequent was rendered impossible by the act of the grantor, the Mexican Governor, and the grant became by international law, by our system of jurisprudence and by that of the civil law prevailing in Mexico, a grant of the entire tract in fee simple.

This title, as it existed under the Mexican law

at the time of the cession of New Mexico to the United States was that which Vigil and St. Vrain were to conserve and retain, and the right vested at once upon the ratification of the Treaty, and could not be divested by the declaration of war or by any act of Congress.

United States vs. Arredondo, 6 Perter, 645.

With reference to the adjustment of these land claims, Congress by the eighth Section of the Act of 1854, 10th Stat., 308, made it the duty of the Surveyor General of that territory to ascertain the origin, nature, character and extent of the same, and make a full report of his decision as to the validity or invalidity of each claim under the laws, usages, and customs of the country before the cession to the United States, with report according to a form to be prescribed by the Secretary of the Interior so to be laid before Congress for such action as might be deemed just and proper.

Tameling vs. United States, 93 U. S. Reps., 662.

Under this statute, the Surveyor General on September 17, 1857, recommended the Vigil and St. Vrain grant for confirmation in its entirety and transmitted his report to Congress for its action in the premises.

The great object of the Treaty so far as it undertook to deal with private interests was to preserve to those who had been Mexican citizens, all their property of every description. There were both perfect and imperfect titles to land, and in respect to those which were imperfect, the Treaty

could not be executed without giving effect to all the subsequent equities of each case.

Adams vs. Norris, 103 U. S. Reps., 593.
Beard vs. Federy, 3 Wall, 478-491.

By this Treaty, the property of Mexicans within the territory ceded by Mexico to the United States was entitled to protection, and Congress might either itself discharge the duty of providing the mode of securing those rights, or delegate it to a judiciary department.

Astiazaran vs. Santa Rita L. and M. Co., 148 U. S. Reps., 80.

Private rights of property in a ceded territory are no ways effected by the Treaty cession.

Interstate Land Co. vs. Maxwell Land Grant Co., 139 U. S. Reps., 569.

FOURTH.

DID THE ACT OF CONGRESS OF JUNE 21, 1860 AND ACTS SUPPLEMENTARY THRETO, DIVEST THE SAID RIGHTS OF VIGIL AND ST. VRAIN AND THEIR GRANTEES UNDER THE SAID GRANT?

Congress has no constitutional power to settle such rights under treaties. The construction of them is a peculiar province of the judiciary. Report must be had to the judiciary department in case of any doubt as to the grant title.

Wilson vs. Wall, 6 Wallace, 85-89.

Phillips vs. Mound City Asso., 124 U. S. Reps., 605-610.

Botiller vs. Dominiques, 130 U. S. Reps., 250.

Article three, Section two of the Constitution reads, "the judiciary power shall extend to all cases in law and equity arising under this constitution or laws of the United States and treaties made, or which shall be made under their authority.

This Court has said in Tennessee vs. Davis, 100 U. S., Reps., 264, what constitutes a case thus arising was early defined in the case cited from 6th Wheaton. It is not merely one where a party goes into court to demand something conferred upon him by the constitution or by law or a treaty. A case consists of the right of one party as well as the other, and may truly be said to arise under the constitution or a law or treaty of the United States whenever its correct decision depends upon the con struction of either.

This Court has also said in Fletcher vs. Peck, 6 Cranch, 114, 135, 136, "to a legislature all legislative power is granted, but the question of whether the act of transferring property of an individual to the public be in the nature of the legislative power, is well worthy of serious reflection." It is the peculiar province of the legislature to prescribe general rules for society. The application of these rules to individuals in society would seem to be the duty of their departments.

Again this Court has said in Osborne vs. United States Bank, 9th Wheaton, 74, 819, "this clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the ju-

dicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by the party who asserts his rights in the form prescribed by law. It then becomes a case and the Constitution declares that the judicial power shall extend to all cases arising under the constitution, laws and treaties of the United States.

So that the action of the Court of Private Land Claims in deciding that it "does not have jurisdiction of the subject matter for the reason that the right to the land claimed in said suits has hitherto been lawfully acted upon and decided upon by Congress" does not divest the rights of the appellants and their grantees herein, for the reason that their right and title to such grant is in no ways effected or concluded by said Acts of Congress. Said rights could only be divested by an adverse decision of the courts of the United States based upon a proper hearing and consideration of the facts of the case.

Respectfully submitted.

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